

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA**

Derrick E. Kirtman, #08020-062,	) C/A No. 4:16-2839-TMC-TER
	)
Plaintiff,	)
	) ORDER
vs.	)
	)
Chaplain Helbig,	)
S.I.A. Stivers,	)
S.I.A. Lt. Dumbar,	)
Warden Cruz,	)
Case Manager McCellan,	)
Hospital Administrator, Jane Doe-1,	)
Assistant Hospital Administrator Whitehurst,	)
Assistant Warden Landford,	)
Assistant Warden John Doe-2	)
Register Nurse K. Caluago,	)
Register Nurse Jane Doe-3,	)
Correctional Officer John Doe-4,	)
—	)
Counselor Parker,	)
Counselor Coates,	)
Unit Manager Horton,	)
Warden Tewer,	)
M.D. Jesus Fernandez,	)
M.D. Ross Quinn,	)
P.A. Hernandez,	)
P.A. Brisitte Wolverton,	)
E. Topete,	)
Warden John Doe-5,	)
	)
Defendants.	)
	)

---

This is a civil action filed by Plaintiff, a federal prisoner proceeding *pro se*, alleging violations of his constitutional rights against federal employees in their individual capacity under *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

On September 21, 2016, the Clerk of Court issued summonses for Defendants Nurse K Caluago, Jane Doe-1, and Jane Doe-3, as well as several other Defendants. (ECF No. 16). On

November 21, 2016, the summonses as to Nurse K Caluago, Jane Doe-1, and Jane Doe-3 returned unexecuted from the U.S. Marshal with the notation that the Defendants could not be identified. (ECF Nos. 25-27). On November 28, 2016, the court ordered Plaintiff to provide updated service forms with more specific identifying information for Defendants Jane Doe-1, Nurse K Caluago, and Jane Doe-3 and warned that dismissal was possible if he did not respond to the order and provide the requested information. Plaintiff was also informed of his duties under the Federal Rules of Civil Procedure, Rule 4. (ECF No. 28).

On December 27, 2016, Plaintiff requested an extension of time to respond to the order to update service forms. (ECF No. 39). On January 4, 2017, the court granted Plaintiff additional time. (ECF No. 40). On February 2, 2017, the court issued another order for Plaintiff to provide updated service forms with more specific identifying information for Defendants Jane Doe-1, Nurse K Caluago, and Jane Doe-3, along with other items Plaintiff was ordered to provide. (ECF No. 51). On February 21, 2017, Plaintiff requested another extension of time to respond. (ECF No. 54). On February 23, 2017, the court extended Plaintiff's response time again and also reiterated the requirements of prior orders and the consequences of the failure to respond. (ECF No. 55).

On March 8, 2017, Plaintiff responded to parts of the prior orders, but failed to submit additional service documents with specific identifying information for Defendants Jane Doe-1, Nurse K Caluago, and Jane Doe-3. (ECF No. 59).

Federal Rule of Civil Procedure 4(m) provides that if a defendant is not served within 90 days, the court may *sua sponte* dismiss the action without prejudice against that defendant. The Clerk of Court shall calculate the 90-day period for service of process under Rule 4(m) from the date on which the summons is issued. *Robinson v. Clipse*, 602 F.3d 605, 608-09 (4th Cir. 2010) (tolling

during initial review). Here, the summonses for Defendants Nurse K Caluago, Jane Doe-1, and Jane Doe-3 were issued on September 21, 2016. (ECF No. 16). More than ninety days has passed for Plaintiff to accomplish service. Plaintiff has also been given several opportunities by the court to comply. Plaintiff has not further identified Defendants Nurse K Caluago, Jane Doe-1, and Jane Doe-3 and has not shown they have been properly served.

Accordingly, Defendants Nurse K Caluago, Jane Doe-1, and Jane Doe-3 are dismissed without prejudice.

**IT IS SO ORDERED.**

s/Timothy M. Cain  
United States District Judge

Anderson, South Carolina  
March 22, 2017